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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,873	06/25/2003	J. Edward Roth	FS-00743	2123

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EXAMINER

HUYNH, LOUIS K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,873

Applicant(s)

ROTH, J. EDWARD

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 22-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

“packaging mechanism 110” on page 8, line 10 should be changed to: --packaging mechanism 100--.

Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “serrate mechanism” (claims 5, 9, 12 & 23) and “the cutting mechanism” (claim 5) must be shown or the feature(s) canceled from the claim(s). Note that the specification on page 8, lines 5-6, discloses a “clamping, cutting and serrate mechanism” (110), but does not disclose three separate mechanisms as required in claim 5 or a “clamping and serrate mechanism” as required in claims 9, 12 & 23. No new matter should be entered.

3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement

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Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-17 and 22-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 3-4: “a loading position” is indefinite for it is unclear whether or not the loading position of the plate-like member is the same as the loading position of the loading bed. Applicant’s Remarks filed 10/27/2004 has clarified that the loading position of the loading bed and the loading position of the plate-like member are different; therefore, they must be clearly identified with modifier; for example: a loading position for the loading bed and a retracted position for the plate-like member.

Claim 1, line 4: “a second position” is indefinite for it is unclear whether or not the second position of the plate-like member is the same as the second position of the loading bed. Applicant’s Remarks filed 10/27/2004 has clarified that the second position of the loading bed and the second position of the plate-like member are different; therefore, they must be clearly identified with modifier; for example: a loaded position for the loading bed and an extended position for the plate-like member.

Claim 1 is indefinite for omitting the structural relationship between the sealing member and the loading bed; therefore, it is unclear as to what is acting against the sealing member in order to seal the wrap. Furthermore, the claim lacks the structural/functional relationships between the movements of the loading bed and the plate-like member; therefore, it is unclear as to where the loading position and the second position of the plate-like member are with respect to the loading bed. Specifically, the location of the loading position of the loading bed being above the plate-like member and the “second position” (as used in the claim) of the loading bed being below the plate-like member.

Claim 6, line 2: “a second position” is indefinite for it is unclear whether or not the second position of the hinged portion is the same as the second position of the plate-like member, or is the same as the second position of the loading bed. Applicant’s Remarks filed 10/27/2004 has clarified that the second position of the hinged portion is different from the second position of the loading bed and the second position of the plate-like member; therefore, such position must be clearly identified with modifier; for example: a sealing position.

Claim 8, line 2: “product stacked on the loading bed” lacks proper antecedent basis because staking of the product on the loading bed has not been set forth in either claim 1 or claim 7 from which claim 8 depends.

Claim 12, line 4: “a loading position” is indefinite for it is unclear whether or not the loading position of the bag former mechanism is the same as the loading position of the loading bed. Applicant’s Remarks filed 10/27/2004 has clarified that the loading position of the loading bed and the loading position of the bag former mechanism are different; therefore, they must be clearly identified with modifier; for example: a loading position for the loading bed and a retracted position for the bag former mechanism.

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Claim 12, line 4: “a second position” is indefinite for it is unclear whether or not the second position of the bag former mechanism is the same as the second position of the loading bed. Applicant’s Remarks filed 10/27/2004 has clarified that the second position of the loading bed and the second position of the bag former mechanism are different; therefore, they must be clearly identified with modifier; for example: a loaded position for the loading bed and an extended position for the bag former mechanism.

Claim 12 is indefinite for omitting the structural relationship between the sealing member and the loading bed; therefore, it is unclear as to what is acting against the sealing member in order to seal the wrap. Furthermore, the claim lacks the structural relationship between the movements of the loading bed and the bag former mechanism; therefore, it is unclear as to where the loading position and the second position of the bag former mechanism are with respect to the loading bed.

Claim 14, line 2: “a second position” is indefinite for it is unclear whether or not the second position of the hinged portion is the same as the second position of the bag former mechanism, or is the same as the second position of the loading bed. Applicant’s Remarks filed 10/27/2004 has clarified that the second position of the hinged portion is different from the second position of the loading bed and the second position of the bag former mechanism; therefore, such position must be clearly identified with modifier; for example: a sealing position.

Claim 15, line 2: “the second position” is indefinite for it is unclear as to which second position applicant is referring. Note that the hinged portion is connected to the bag former mechanism which is movable to its own second position.

Claim 17, lines 3-4: “product stacked on the loading bed” lacks proper antecedent basis because staking of the product on the loading bed has not been set forth in claim 12.

Claim 22, lines 13-14: “a member positioned proximate to the hinged portion, the member sealing a wrap about a group of sequenced mail objects” is ambiguous because it is unclear as to whether or not the sealing member is connected to the hinged portion. Note that the specification does not describe a sealing member that is positioned proximate to the hinged portion in such a way that the sealing member seals the wrap independently with respect to the hinged portion. Applicant’s Remarks filed 10/27/2005 contends that claim 12 does not recite “independently” language and that such language should not be read into the claim. Applicant is respectfully reminded that “proximate” is not “connected” and thus the member seals the wrap independently with respect to the hinged portion because there is no connection between the member and the hinged portion.

Claim 22 is indefinite for omitting the structural relationship between the member and the loading bed; therefore, it is unclear as to what is acting against the member in order to seal the wrap. Furthermore, the claim lacks the structural relationship between the movements of the loading bed and the bag former mechanism; therefore, it is unclear as to where the two positions of the bag former mechanism are with respect to the loading bed and or the two positions of the loading bed with respect to the bag former mechanism. Specifically, one of the two positions of the loading bed being above the bag former mechanism and the other position of the two positions of the loading bed being below the bag former mechanism.

Claim 24 is confusing because it is unclear as to the movement of the loading bed with respect to the bag former mechanism and vice versa since the first and second positions are not determined. Applicant is entitled to the a broad claim; however, it is unclear as to where the first and second positions of the loading bed are.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 22, 26 and 27, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Okinaka (US 4,903,459).

Okinaka discloses an apparatus including: a loading bed (34) movable between a loading position (FIG. 3) and a release position (FIG. 4); a plate-like member (lever 25) pivotable with respect to the loading bed (34) between a first position (FIG. 2) and a second position (FIG. 2) about a hinge pin (24), the plate-like member (25) having a hinged portion (30); a sealing member (53) at an end of the hinged portion (30) for sealing a wrap (101) about a product (100) to form a package (102) when the plate-like member (25) is positioned over the loading bed (34).

The apparatus of Okinaka includes an inherent conveyor for sequencing the product (100) onto the loading bed (34). Regarding the product being mail product as recited in claim 22, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

With respect to Claim 26, the claim is directed to an intended use and does not structurally distinguish the claimed invention over the applied prior art. However, the apparatus of Okinaka is capable of receiving an empty wrap when the loading bed (34) is in its loading position and the plate-like member (25) is in its second position.

With respect to Claim 27, FIG 3 shows a product placed on a portion (100) of the wrap (101) when the loading bed (34) is in the loading position.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 12, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Okinaka (US 4,903,459) in view of Kujubu (US 5,386,678) and Bouressa (US 5,934,048).

Okinaka discloses an apparatus including: a loading bed (34) movable between a loading position (FIG. 4) and a release position (FIG. 5); a bag former mechanism (25, 30) pivotable with respect to the loading bed (34) between a first position (FIG. 2) and a second position (FIG. 2) about a hinge pin (24), the bag former mechanism having a hinged portion (30); a sealing member (53) at an end of the hinged portion (30) for sealing a wrap (101) about a product (100) to form a package (102) when the bag former mechanism (25, 30) is positioned over the loading bed (34); and a clamping mechanism (43 & 53) 43 & 53) for clamping and sealing the wrap (101). The apparatus of Okinaka meets all of applicant's claimed subject matter except for a serrate mechanism for serrating the wrap after the wrap has been sealed.

Kujubu discloses a similar apparatus (10) wherein the wrap (38) is cut by a knife (93) after the wrap has been sealed in order to remove the unused upper portion of the wrap from the package. Therefore, it would have been obvious to an ordinary skilled person in the art, at the time the invention was made, to have modified the apparatus of Okinaka by having provided a

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cutting mechanism, as taught by Kujubu, in order to remove the unused portion of the wrap from the package.

The modified apparatus of Okinaka meets all of applicant's claimed subject matter but lacks the specific teaching of the cutting mechanism being a serrate mechanism. However, Bouressa disclose a cutting blade (1) being a serrate blade for separating thermoplastic bags. Therefore, it would have been obvious to an ordinary skilled person in the art, at the time the invention was made, to have further modified the apparatus of Okinaka by having a serrate mechanism, as taught by Bouressa, so that the wrap is firmly held while being cut and the energy required for cutting will be reduced because of smaller piercing points of the serrate mechanism.

Allowable Subject Matter

10. Claims 2-11, 13-17, 23-25, 28 and 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed 10/27/2004 have been fully considered but they are not persuasive.

12. Applicant contends that the L-shaped lever (25) disclosed in the Okinaka reference is not a plate-like member and the plate-like member as claimed is not shown in the Okinaka reference. This is not found persuasive because the L-shaped lever (25) is a plate-like member, applicant is respectfully directed to FIGS. 2 & 5 which shows that the lever (25) comprises two plate-like L-shaped members.

13. Applicant also contends that chamber (30) of Okinaka is not a hinged portion. However, the chamber (30) is connected to the L-shaped lever (25) and is hinged at a pivot point (24) for

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pivotal movement; thus the chamber (30) is a hinged portion of the lever (25) which read on the claim limitation of “the plate-like member having a hinged portion” of claim 1 and “a hinged portion positioned at an end of the bag former mechanism” of claims 13 and 22.

14. Applicant further contends that Okinaka does not inherently include a device for sequencing food product. This is not found persuasive because the apparatus of Okinaka is for automatic sealing products in wrappers that are fed from an inherent conveyor one after another onto the loading bed (34) in sequence, and thus meet the claimed functional limitation of the sequencing device.

15. With respect to Claim 12, applicant contends that Okinaka does not disclose a hinged portion positioned at an end of the bag former mechanism, and a sealing member positioned at the end of the hinged portion. This is not found persuasive because the apparatus of Okinaka does have a hinged portion (30) as explained above and a sealing member (53) positioned at an end of the hinged portion as depicted in FIG. 3. Note that the claim does not limit which end of the hinged portion the sealing member must be position; therefore, the sealing member (53) positioned at a left end of the hinged portion (30) in the apparatus of Okinaka reads on the claimed limitation.

16. Applicant further contends, with respect to claim 12, that the clamping and serrate mechanism of the modified Okinaka apparatus would not clamp the wrap (101) during the movement of the bag former mechanism toward the second position. This is not found persuasive because the modified apparatus of Okinaka does clamp the wrap for sealing during the movement (rotation) of the bag former (25) from a first position (left) toward the second position (right). See FIGS. 1 & 2.

17. Finally, applicant contends that the modified apparatus of Okinaka in view of Kujubu and further in view of Bouressa would not have result in the claimed invention of claim 12 because serrating of the wrap would interfere with the operation of the Okinaka apparatus. This not found persuasive because Kujubu teaches that unused portion of the wrap should be trimmed from the sealed package and the cut portion is withdrawn from sealing chamber so that it would not interfere with the sealing operation of the next package. An ordinary skilled person in the art would have known how to applied such removing mechanism in modifying the Okinaka apparatus. Regarding the serrate knife of Bouressa being used in place of the Kujubu's knife, the office action has reasonably provide the prima-facie of obviousness as set forth in the rejection of claim 12 above.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

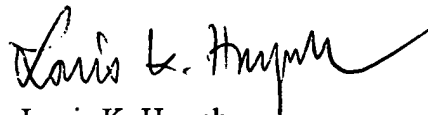
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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (571) 272-4462.

The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Louis K. Huynh
PRIMARY EXAMINER
Art Unit 3721

February 08, 2005